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SERVICE DATE - SEPTEMBER 7, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 179X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN MERCED COUNTY, CA

STB Docket No. AB-458X

CALIFORNIA NORTHERN RAILROAD COMPANY—DISCONTINUANCE EXEMPTION—
IN MERCED COUNTY, CA

Decided: September 5, 2001

By petition jointly filed on May 22, 2001, the Union Pacific Railroad Company (UP) and the California Northern Railroad Company (CNR) (jointly, petitioners) seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, permitting UP to abandon and CNR to discontinue service over a 1.10-mile segment of the Los Banos Branch, extending from milepost 140.07 to milepost 141.17 in Los Banos, Merced County, CA. Pursuant to 49 U.S.C. 10502(b), the Board served and published notice in the Federal Register (66 FR 31275) on June 11, 2001, instituting an exemption proceeding. We will grant the exemption, subject to two environmental conditions and standard employee protective conditions.

Petitioners state that the only shipper that uses the line is Los Banos Foods, Inc. (Los Banos Foods), which, in 2000, shipped 4 carloads of powdered milk from a team track loading facility located on the line. According to petitioners, the abandonment will facilitate a redevelopment project in downtown Los Banos that includes using the abandoned right-of-way for an entertainment/park complex, senior citizen housing and retail facilities. They indicate that, as part of the project, local authorities have agreed to construct a new team track facility on another portion of the line and that Los Banos Foods has agreed to use the new facility.¹ Petitioners claim further that there are no indications that sufficient future traffic could be generated on the line from additional shippers to justify the costs necessary for continued rail operations.

¹ With their petition, petitioners submitted a letter from Los Banos Foods supporting the relocation of its loading facility. They certify that a copy of the petition was served on this shipper.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving petitioners of the costs of owning, maintaining, and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected. An exemption will also facilitate plans to redevelop the abandoned right-of-way.

Because the line's only shipper will continue to have access to rail service at a new loading facility, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that Los Banos Foods is informed of our action, we will require petitioners to serve a copy of this decision on the shipper within 5 days of the service date of this decision and certify to us that they have done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Petitioners have submitted an environmental report with their petition and have notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on July 20, 2001.

In the EA, SEA indicated that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified four geodetic markers that may be affected by the proposed abandonment. SEA also indicated that the California Department of Toxic Substances Control (Control) has identified two sites in Las Banos on its list of hazardous substances release sites. SEA, therefore, recommended that the following conditions be imposed on any decision granting abandonment authority: that UP (1) notify NGS 90 days prior to salvage activities in order to

plan the relocation of the geodetic markers; and (2) contact Control prior to salvage or disposal activities to avoid conflict with activities at these sites.

No comments on SEA's recommendations were filed by the due date. We will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment and discontinuance, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA states that, following the abandonment, the right-of-way may be suitable for other public use under 49 U.S.C. 10905. We note, however, that no one has sought a public use condition, and none will be imposed.²

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment and the service discontinuance of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that UP shall: (1) notify NGS 90 days prior to salvage activities in order to plan the relocation of the geodetic markers; and (2) contact Control prior to salvage or disposal activities to avoid conflict with activities at the two identified hazardous substance release sites.

2. Petitioners are directed to serve a copy of this decision on Los Banos Foods within 5 days after service of this decision and to certify to the Board that they have done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)³ to allow rail service to continue must be received by petitioners and the Board by September 17, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

² Public use requests were due by July 2, 2001, 20 days after publication of notice of the petition in the Federal Register.

³ See Aband. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997).

5. Provided no OFA has been received, this exemption will be effective on October 7, 2001. Petitions to stay must be filed by September 24, 2001, and petitions to reopen must be filed by October 2, 2001.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by September 7, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary